

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

REMARKS

The Office Action dated August 9, 2006, has been received and carefully considered. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE OBVIOUSNESS REJECTION OF CLAIMS 1-20

On page 2 of the Office Action, claims 1-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsuji et al. (U.S. Patent No. 6,397,258) in view of Naegeli et al. (U.S. Patent No. 6,574,797). This rejection is hereby respectfully traversed.

As stated in MPEP § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

be found in the prior art, not in applicant's disclosure. In re
Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Regarding claims 1, the Examiner asserts that Tsuji discloses the claimed step of "determining a delay for the at least one data transmission based on the maximum bandwidth specified." Applicant has considered the teachings and suggestions of Tsuji and respectfully disagrees with the Examiner as to its teaching. In particular, Applicants respectfully submit that Tsuji does not teach or suggest "determining a delay for the at least one data transmission based on the maximum bandwidth specified," as expressly recited in independent claim 1. Rather, the portion of Tsuji cited by the Office Action as disclosing this limitation merely discloses data comprising the product of a standard bandwidth assured and the maximum delay time:

According to the eleventh aspect, data in an amount determined by the product of the standard bandwidth assured (as the maximum bandwidth) and the maximum delay time is prefetched, thereby making it possible to conceal reading delay with a high probability..

See, Tsuji patent, Col. 8, lines 17-21.

Applicant is perplexed at how the referenced excerpt can be said to teach or suggest the specific limitation of "determining a delay for the at least one data transmission based on the maximum bandwidth specified." In particular, the excerpt does

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

not specify that the delay is "determined," much less that it is based on the maximum bandwidth specified. *Further, Applicant respectfully submits that the cited excerpt relates to the product of the maximum bandwidth and the maximum delay time in order to determine what amount of data to prefetch, not to determine a delay as required by the pending independent claims.* In fact, the preceding language in Tsuji (Col. 8, lines 13-16) clearly states that "the maximum delay time is previously calculated," making clear that the language referenced by the Examiner (i.e., Col. 8, lines 17-21) does not disclose determining a delay based on the maximum bandwidth specified. Moreover, Applicant respectfully submits there is no teach or suggestion in the balance of Tsuji's specification that even remotely relates to the determination of a delay based on the maximum bandwidth specified. Applicant respectfully submits, therefore, that Tsuji does not teach or suggest the specific step of "determining a delay for the at least one data transmission based on the maximum bandwidth specified," as expressly recited in independent claim 1.

Further, as previously argued, Applicants respectfully submit that Naegeli does not teach or suggest "configuring a maximum bandwidth for at least one data transmission," as expressly recited in claim 1. Rather, the portion of Naegeli

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

cited by the Office Action as disclosing this limitation merely states that an "upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate." See Naegeli patent, Col. 8, lines 35-38. Applicants respectfully submit, however, that such a teaching is not the same as "configuring a maximum bandwidth for at least one data transmission," as recited in independent claim 1.

Applicants also respectfully submit the Office Action fails to set forth a proper motivation to combine the disclosures of Tsuji and Naegeli. The cited motivation is based on hindsight from viewing the claims of the present application. Thus, Applicant respectfully submits that Office Action fails to meet the burden necessary to establish a *prima facie* obviousness rejection.

Independent claim 11 recites related subject matter to the above-identified independent claim, and is therefore allowable for reasons similar to those given above.

Claims 2-10, 12-22 are dependent upon either independent claim 1 or 11. Thus, since independent claims 1 and 11 should be allowable as discussed above, claims 2-10, 12-22 should also be allowable at least by virtue of their dependency on independent claim 1 or 11. Moreover, these claims recite

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, dependent claim 2 recites "wherein the server comprises a trivial file transfer protocol." Applicants respectfully submit that the excerpt from Tsuji referenced by the Examiner as disclosing this limitation - Col. 17, lines 22-26 -- fails to teach or suggest such a limitation:

In the file writing part 307, the transmission bandwidth control part 311 controls a transmission bandwidth used for file transfer from the client 101 to the file server 102 on the basis of the attribute information fed to the file writing part 307.

Dependent claims 8 and 18 recite a specific formula for determining the claimed delay. While the Examiner asserts that the Tsuji-Naegeli combination teaches or suggests such a formula in Col. 25, lines 1-22 of Tsuji, Applicant respectfully submits that the formula disclosed therein does not teach or suggest the formula set forth in claim 8. *Rather, Applicant respectfully submits that formula disclosed by Tsuji and referenced by the Examiner merely determines the minimum amount of prefetching, not a delay as required by claims 8 and 18.*

Similarly, dependent claim 21 recites "wherein the maximum bandwidth is specified by a user." Applicants respectfully submit that the excerpt from Tsuji referenced by the Examiner as disclosing this limitation - Col. 6, lines 12-29 -- fails to

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

teach or suggest such a limitation, particularly the requirement that the bandwidth is specified by a user:

According to the first aspect, the file system capable of setting bandwidths for file writing and file reading in response to the requests from the application is realized.

A second aspect is characterized in that in the first aspect,

the bandwidth setting part sets a standard bandwidth and the type of bandwidth assurance when the bandwidth setting is performed,

the type of bandwidth assurance includes maximum bandwidth assurance for assuring the standard bandwidth as the maximum bandwidth, and

the first transmission bandwidth control part and/or the second transmission bandwidth control part carry out, when the maximum bandwidth assurance is set, such transmission bandwidth control that even if there is a vacant bandwidth, data is transmitted using only the assured standard bandwidth..

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-22 be withdrawn.

II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the

BEST AVAILABLE COPY

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to

Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By: 

Ozale A. Farres

Registration No. 43,606

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: October 10, 2006